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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,147	09/29/2003	James J. McGrath III	A-1583con	1917
33197	7590	09/05/2007		
STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			EXAMINER NGUYEN, CHI Q	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 09/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/674,147

**Applicant(s)**

MCGRATH, JAMES J.

**Examiner**

Chi Q. Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,8,11,12,21,26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,11,12,21,26 and 28-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: attachment.

### **DETAILED ACTION**

This Office action is in response to the applicant's amendment filed on 6/8/2007.

#### ***Status of claims***

Claims 2, 6-7, 9-10, 13-20, 23-25, and 27 have been cancelled.

Claims 1, 3-5, 8, 11-12, 21-22, 26, 28-32, and newly added claims 33-35 are pending and have been examined.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over No. 4,365,590 to Ruggieri et al.

Claims 32 and 35:

Ruggieri discloses a cage comprising an access panel including a door 26 and a frame 28 peripherally surrounding said door, said door being attached to said frame, a cage having side walls 20/22, a rear wall 24 and attached to said access panel frame, wherein said access panel is fire protection rated because it made out of sheet metal, e.g. stainless steel (see col. 3, line 59), a plurality of openings 42 (metal grill) for ensuring fluid communication between an interior portion of the cage and surrounding space, a shelf 32 disposed in the interior portion of said cage (see Fig. 1).

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Ruggieri teaches the basic structures for the claimed invention but does not teach the access panel is fire rated protection for at least greater than thirty minutes, or 1 ½ hours. However to provide a fire protection for a predetermined period time is greater than thirty minutes or 1 ½ hours, would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a fire protection rated for protecting inside occupants enough time to escape. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 1, 3-5, 21, 26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,652,563 to Maus in view of US Pat. No. 5,522,344 to Demurjian.

Claims 1, 21, 26, and 33:

Maus discloses a safety system enclosure comprising an access panel including a door 13 and a frame F (see attached of Fig. 6) peripherally surrounding said door, said door being attached to said frame, a cage or stall 10 having side and rear walls and attached to said access panel frame, wherein said access panel is fire protection rated (see col. 7, line 60). Maus does not teach expressly the cage having a plurality of opening for ensuring fluid communication between an interior portion of the cage and surrounding space. Demurjian teaches a cage 10 having a plurality of openings on side and end walls (see Fig. 1). At the time of the invention, it would have been obvious to a person having an ordinary skill in the art to modify Maus' cage for Demurjian's cage for having a plurality of openings for ventilation purposes thus preventing horses from suffocation. Maus in view of Demurjian teach the basic structures for the claimed

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invention but do not teach the cage comprising expanded metal, and the access panel is fire rated protection for at least greater than thirty minutes, or 1 ½ hours. However, this feature would have been considered a method of forming a device and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight; And to provide a fire protection for a predetermined period time is greater than thirty minutes or 1 ½ hours, would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a fire protection rated for protecting inside occupants enough time to escape members. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 3-4, and 28-29:

And further comprising an environmental sensing device comprises a smoke detector 21 (Fig. 6).

Claims 5 and 30:

Wherein said sensing device comprises a heat sensor 22 (Fig. 6).

Claims 1, 8, 21, 31, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,365,590 to Ruggieri et al.

Claims 1, 8, and 21:

Ruggieri discloses a cage comprising an access panel including a door 26 and a frame 28 peripherally surrounding said door, said door being attached to said frame, a cage having side walls 20/22, a rear wall 24 and attached to said access panel frame, wherein said access panel is fire protection rated because it made out of sheet metal, e.g. stainless steel (see col. 3, line 59), a plurality of openings 42 (metal grill), outlet

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openings 36 for ensuring fluid communication between an interior portion of the cage and surrounding space, a shelf 32 disposed in the interior portion of said cage (see Fig. 1). Ruggieri teaches the basic structures for the claimed invention but do not teach the cage comprising expanded metal and welded to the frame, and the access panel is fire rated protection for at least greater than thirty minutes, or 1 ½ hours. However, this feature would have been considered a method of forming a device and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight; And to provide a fire protection for a predetermined period time is greater than thirty minutes or 1 ½ hours, would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a fire protection rated for protecting inside occupants enough time to escape.

Furthermore, applicant has not disclosed the criticality of this feature.

Claims 31 and 34:

Ruggieri discloses a cage comprising an access panel including a door 26 and a frame 28 peripherally surrounding said door, said door being attached to said frame, a cage having side walls 20/22, a rear wall 24 and attached to said access panel frame, wherein said access panel is fire protection rated because it made out of sheet metal, e.g. stainless steel (see col. 3, line 59), a plurality of openings 42 (metal grill) for ensuring fluid communication between an interior portion of the cage and surrounding space (Fig. 1). Ruggieri teaches the basic structures for the claimed invention but does not teach the cage is welded to said panel frame, and the access panel is fire rated protection for at least greater than thirty minutes, or 1 ½ hours. However, this feature

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would have been considered a method of forming a device and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight; And to provide a fire protection for a predetermined period time is greater than thirty minutes or 1 ½ hours, would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a fire protection rated for protecting inside occupants enough time to escape members. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,365,590 to Ruggieri et al. and in view of US Pat. No. 5,010,845 to Azpurua et al.

Ruggieri discloses the basic structures for the claimed invention as stated but does not disclose at least one environmental sensing device disposed on said shelf or attached to an underneath surface of said shelf. Azpurua teaches a cage apparatus 11 including a thermometer 16 attached to the cage (see Fig. 3). At the time of the invention was made it would have been obvious to one of ordinary skill in the art to provide a thermometer or environmental sensing device disposed to the cage to ensure the cage should have a comfortable temperature for animals. Ruggieri in view of Azpurua teach the basic structures for claimed invention except for the sensing device disposed on the shelf or underneath surface of said shelf. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose a sensing device on or underneath surface of the shelf, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86

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USPQ 70. The motivation for doing so would have to get a comfortable environment for animals where they're normally stayed.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-5, 8, 21, 33, 26, 22, 28-32, 34-35, and 11-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at (571) 272-6777.

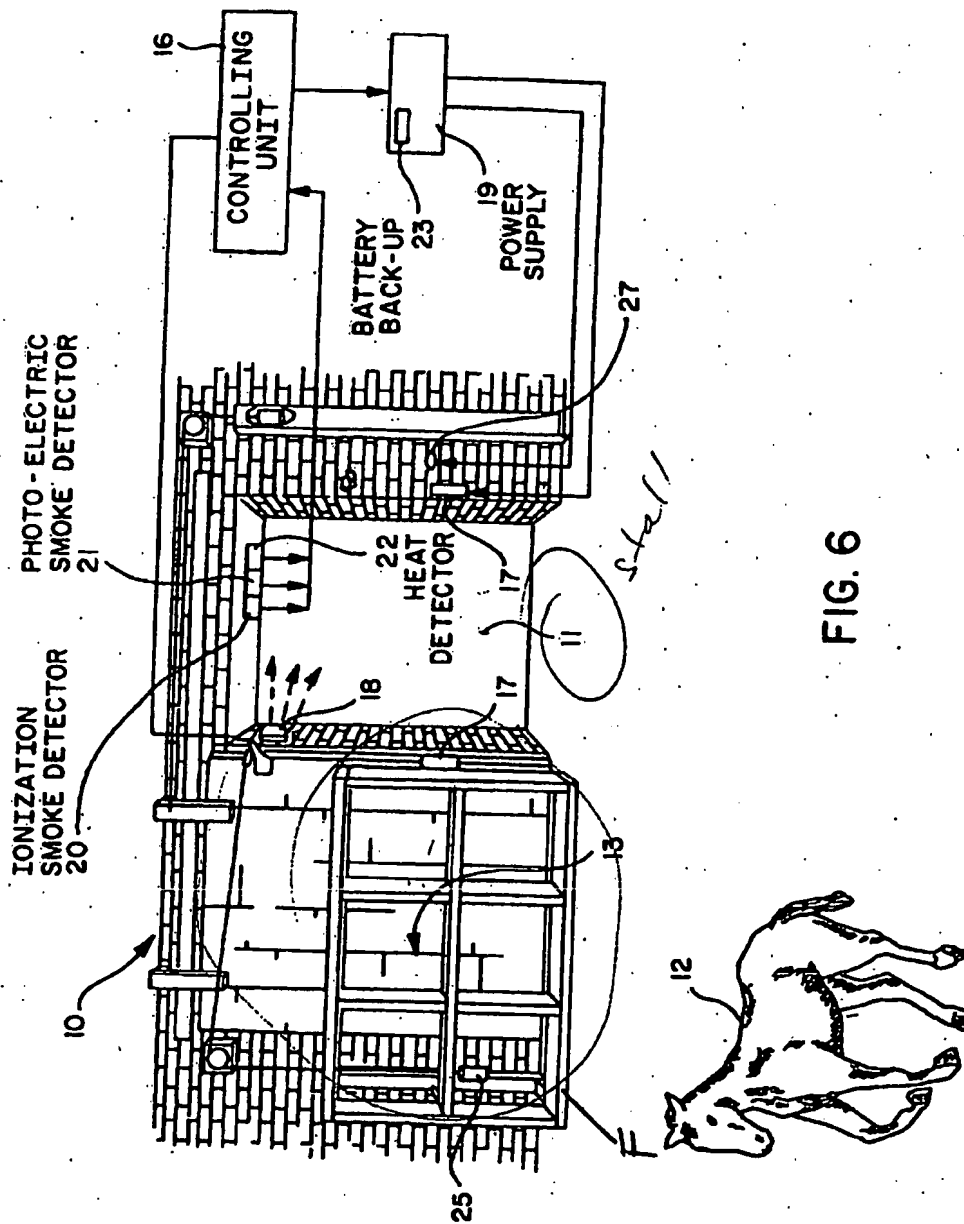
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CQN

8/28/2007



RICHARDE CHILCOT, JR.  
SUPERVISORY PATENT EXAMINER



**Fig. 6**